

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Astro Auto Wrecking, LLC

Federal Way, Washington

Respondent.

DOCKET NO. CWA-10-2021-0097

Final Status Report

Consistent with the Presiding Officer's order dated August 18, 2022 (Dkt. No. 22), Complainant files this Final Status Report to inform the Presiding Officer that after more than six months Complainant and Respondent have been unable to reach a negotiated resolution of this matter. Accordingly, Complainant does not request any additional stay of the Presiding Officer's consideration of the Motion for Default Judgment and supporting memorandum and exhibits filed on March 1, 2022 (Dkt. Nos. 3, 4 and 5).

I. Procedural History

On April 29, 2021, Complainant filed an Administrative Complaint against Astro Auto Wrecking, LLC ("Respondent") alleging violations of the Clean Water Act (Dkt. No. 1). Pursuant to 40 C.F.R. §§ 22.15(a) and 22.7(c) the Respondent's answer was due on or around June 2, 2021. On March 1, 2022, Complainant filed a Motion for Default Judgment pursuant to 40 C.F.R. § 22.17 alleging that Respondent failed to file a timely answer to the Complaint (Dkt. No. 3).

Shortly after Complainant filed its Motion for Default Judgment Respondent's employee sent an email to the Regional Hearing Clerk and Complainant's counsel explaining the steps Respondent had taken to address the violations in the Complaint but not purporting to answer any statement of fact or violation alleged in the Complaint. Exhibits to Final Status Report, Ex.

1. On March 9, 2022, Complainant's counsel called Respondent's employee to discuss the procedural posture of the matter and to inquire whether Respondent intended to answer the Complaint or to seek a negotiated resolution to the matter. In emails dated March 10 and 11, 2022, Respondent confirmed that it was interested in pursuing a negotiated resolution. Exhibits to Final Status Report, Ex. 2. Based on these communications, Complainant filed a Motion to Stay Consideration of the Motion for Default on March 11, 2022 (Dkt. No. 7). The Motion requested a 30-day stay to allow the Parties to assess the viability of settlement. The Presiding Officer issued an order granting the requested stay on March 14, 2022 (Dkt. No. 9).

A few days prior to the expiration of the first 30-day stay, Complainant was informed that Respondent was in the process of retaining legal counsel. On April 12, 2022, Complainant filed a Status Report and Motion to Extend Stay of Consideration of the Default Judgment (Dkt. No. 11), informing the Presiding Officer that Respondent recently retained counsel and additional time was needed for Respondent's counsel to review the facts and filings and for the Parties to schedule settlement discussions. The Motion requested an additional 60-day stay of the Presiding Officer's consideration of Complainant's Motion for Default Judgment, which was granted on April 13, 2022 (Dkt. No. 13).

Thereafter, the Parties discussed a potential settlement of the matter and the information that Respondent would need to provide to support settlement. On June 10, 2022, Complainant filed a Second Status Report and Motion to Stay Consideration of Motion for Default Judgment (Dkt. No. 15). The Status Report informed the Presiding Officer of the Parties' ongoing efforts to seek settlement which included assessing Respondent's current compliance status, Complainant drafting and sharing a proposed consent agreement for Respondent's review, and the amount of an appropriate penalty payment. *Id.* at 2. The accompanying Motion to Stay Consideration of Motion for Default Judgment requested an additional 60-day stay which the Presiding Officer granted on June 10, 2022 (Dkt. No. 17).

On August 9, 2022, Complainant filed a Motion for a Short-Term Extension to File Status Report (Dkt. No. 19). As explained in that Motion, Respondent had committed to provide Complainant, by no later than August 12, 2022, certain information relevant to the draft consent agreement and amount of appropriate penalty and therefore necessary to the overall resolution of the enforcement matter. *Id.* at 2. Considering Respondent's commitment to provide this necessary information, Complainant sought an extension to file the status report which the Presiding Officer granted on August 10, 2022 (Dkt. No. 21).

On August 18, 2022, Complainant filed a Motion for a Second Short-Term Extension to File Status Report (Dkt. No. 24). As explained in that Motion, the information Respondent provided Complainant was incomplete and prompted additional questions, the resolution of which involved key issues influencing whether the Parties would be able to reach a negotiated settlement. *Id.* at 2. The second short-term extension request was intended to provide Respondent with ample time to submit the information needed to proceed with settlement discussions. The Motion further acknowledged the inefficiencies of short-term extensions and stated clearly that no further short-term extensions would be requested. *Id.* The Presiding Officer granted the second extension request on August 18, 2022 (Dkt. No. 22).

On September 14, 2022, Respondent's counsel provided Complainant notice that he was withdrawing as the attorney of record for Respondent, and to direct future correspondence to Respondent. Exhibits to Final Status Report, Ex. 3. Immediately after receiving the notice of withdrawal, Complainant's counsel emailed Respondent directly requesting that it submit the information needed to continue settlement discussions by no later than September 19, 2022. As of the date of this Final Status Report, Respondent has not submitted complete information that it committed to provide by August 12, 2022, or provided answers to any of Complainant's additional questions.

II. No Good Cause Remains to Extend Stay of Consideration of Motion for Default

This case was filed on April 29, 2021 (Dkt. No. 1), and after Complainant's significant efforts to first encourage Respondent to answer the Complaint and then to provide the information necessary to support a potential settlement, the enforcement matter is no closer to resolution than when first filed. Complainant waited eight months after Respondent's answer was due to move for a default judgment (Dkt. No. 3), and did so only after clearly communicating to Respondent that if no answer was filed by August 6, 2021, Complainant intended to move for default judgment. *See* Memorandum in Support of Motion for Default, Dkt. No. 4, pp. 8-9; Dkt. No. 5, Ex. 13. Even after that deadline passed, Complainant provided Respondent additional time to answer before moving for default.

Respondent's failure to file a timely answer and failure to engage in the exchange of information necessary to support settlement discussions demonstrates disregard as to the seriousness of the enforcement matter and process and of the resources of the Complainant and the Presiding Officer. Complainant spent considerable effort attempting to negotiate with Respondent prior to filing the Complaint. These efforts also involved requests that Respondent provide information to support settlement, which Respondent committed to provide but despite numerous follow-up requests never provided. Memorandum in Support of Complainant's Motion for Default, Dkt No. 4, p. 8. Even after filing its Motion for Default Judgment, Complainant agreed to engage in settlement discussions with Respondent in an attempt to avoid resolving the case by default judgment. However, despite requesting multiple stays to allow time for Respondent to engage in the settlement process in good faith, Respondent's recalcitrance has continued. For these reasons, and despite Complainant's best efforts to reach a negotiated resolution, no good cause remains to extend the stay of the Presiding Officer's consideration of Complainant's Motion for Default Judgment.

Respectfully submitted,

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